

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VINCENT VARNEY,

Plaintiff,

Case No. 2:09-cv-576

v.

JUDGE GREGORY L. FROST

TERRY COLLINS, et al.,

Magistrate Judge Mark R. Abel

Defendants.

OPINION AND ORDER

Plaintiff, Vincent Varney, a prisoner incarcerated in the Ross Correctional Institution, filed this action on July 13, 2009 (Doc. # 3), alleging that Defendants operate an inmate parole procedure that violates the *Ex Post Facto* Clause of the United States Constitution and that deprives inmates of substantive and procedural due process. On April 14, 2010, Defendants filed a motion for summary judgment. (Doc. # 21.) This matter is now before the Court pursuant to the September 1, 2010 Report and Recommendation of the Magistrate Judge recommending that the Court grant the motion for summary judgment. (Doc. # 40.)

The Magistrate Judge found that there is no protected constitutional right to parole eligibility in a state, such as Ohio, with a completely discretionary parole system, and that Plaintiff's claims that Ohio's parole guidelines violate his constitutional right to due process must therefore fail. He found further that Plaintiff could not establish an *ex post facto* violation either by demonstrating that

changes to Ohio's parole guidelines show on their face a significant risk of increased incarceration or by demonstrating by evidence drawn from the guidelines' practical implementation that their application would result in a longer period of incarceration than under prior guidelines. Finally, the Magistrate Judge found that certain victims' rights statutes enacted after the date of Plaintiff's conviction did not have an *ex post facto* effect because they were merely procedural changes that did not alter the parole board's discretion to grant or not to grant parole.

Although Plaintiff was granted an extension of time until October 22, 2010 (Doc. # 46), he has filed no objections to the Report and Recommendation. Accordingly, upon *de novo* review pursuant to 28 U.S.C. § 636(b)(1), the Court **ADOPTS** the Report and Recommendation. (Doc. # 40.) The Court **GRANTS** Defendants' motion for summary judgment. (Doc. # 21.)

Plaintiff filed a supplemental complaint on September 8, 2010, adding a new claim. (Doc. # 43.) The Court's grant of summary judgment today applies only to the claims raised in Plaintiff's original complaint, as well as to Plaintiff's identical First and Second Supplemental Claims raised in his supplemental complaint. Plaintiff's Third Supplemental Claim remains pending.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE